IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2004

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

W.P.No.15347 of 1997

B.Jothi Naidu .. Petitioner

Vs.

1. The State of Tamilnadu
   rep. by its Secretary to
   -Government,
   Rural Development Deput.,
   Fort. St. George, Chennai.9

2. The Director of Rural
   -Development,
   Chennai-15.

3. The Director of Town and
   -Country Planning,
   Chennai.2 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the relief as stated therein.

For petitioner : Mr.K.S.Natarajan for
M/s.T.Saikrishnan &
P.Shyamala

For respondents : Mr.R.Chandrasekaran, G.A.

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O R D E R

Writ Petition praying to issue a Writ of Declaration declaring the Tamil Nadu Panchayat Buildings Rules, 1997 made under the Tamil Nadu Panchayats Act, 1994 and more specifically Section 2(e) as invalid, illegal and unconstitutional insofar as the petitioner is concerned.

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2. The case of the petitioner is that he is the Chairman of Tiruttani Panchayat Union. The Tamilnadu Government have recently framed Tamilnadu Panchayat Buildings Rules 1997 said to be in exercise of the powers conferred by Clause xxxiii of Sub Section (2) of Section 242 of the TN Panchayats Act, 1994 and the same supersedes the T.N. Panchayat Buildings Rules, 1970 made under the T.N. Panchayats Act, 1958. The said rules are liable to be struck down since the very scheme and formulation of the Act, particularly the vesting of the power for the approval of layouts and sites for buildings and huts with the President of the village Panchayat will affect the general public and has been passed hurriedly without any application of mind and creates chaos and confusion in the matter of regulation and granting of approvals for layouts and plans for buildings and huts at the village levels.

3. It is further submitted that with respect to the grant of approval of the layouts and sites for buildings and huts, the Executive Authority is the sanctioning authority and the Executive Authority is the person who has been vested with all the powers to regulate the grant of permission to building plans to the panchayat level and is the person who has to manage all the affairs arising out of the same. The Presidents of the village panchayats have been designated as the Executive Authority and they are vested with the powers of the Executive Authority as per the scheme and frame work of the rules. Citing Section 2(3), the petitioner would submit that in respect of Village Panchayats, the Commissioner of the Panchayat Union was the Executive Authority and the same is now sought to be shifted from the Commissioner of the Panchayat Union to the President of the Village Panchayat. Section 242 of the Act would make it clear that the present rules as have been framed are beyond the rule making competence of the government, more particularly, sub-clause xxxiii of clause (2) from which the power is said to be derived for the making of the rules. The said rules are sought to be given effect to immediately and the first respondent in G.O.Ms.No. 255 dated 18.8.1997 has notified that the rules will be published in the Tamilnadu Government Gazette and has also directed all the District Collectors to communicate the implementation of the rules to all the Executive Authorities and local bodies in the respective Districts.

4.In the counter affidavit filed on behalf of the respondents besides generally denying the allegations of the petitioner would also state that prior to the issue of the present Tamil Nadu Panchayat Buildings Rules 1997, the Tamil Nadu Panchayat BuildingsRules, 1970 were in force and in Rule 2

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(e) of the old Rules 1970 The Commissioner of the Panchayat Union has been defined as the "Executive Authority" he had been empowered with powers granting approval of the site and for permission to execute the work and now in the present Rules 1997 the President of the Village Panchayath has been defined as the "Executive Authority".

5. It is further averred that under Rule 3 of the said Rules, no owner or other person shall layout a street, lane, passage or pathway or sub-divide or utilise the land or any portion or portions of the same on the site or sites for building purposes until a lay out has been approved by the Executive Authority who shall get prior concurrence of the Director of Town and Country Planning; that Clause (xxxiii) of Sub-section (2) of Section 242 of the said Act contemplates "In particular, and without prejudice to the generality of the foregoing power, the Government may make rules as to the Regulation or restriction of building and the use of sites for building" that the present Rules 1997 have been introduced in supersession of the Rules 1970 within the powers delegated to the Government as aforeseen and when the power is exercised by the Village Panchayat, the delay in sanctioning the building plan can be avoided and that the applicants can approach Village Panchayats more easily than the Panchayat Union Commissioner.

6. The respondents would further submit that the Village Panchayat can bring the building for assessment of the house tax immediately after its completion and could check the unauthorised constructions and lay out approval more effectively rather than the Panchayat Union and it could also check misuse of public places for private purposes and that the Rules 1997 have been issued based on the policy decision taken by the Government on such and such other averments the respondents would ultimately pray to dismiss the writ petition.

7. During the arguments the learned counsel appearing on behalf of the petitioner and the learned Government Advocate representing on behalf of the respondents as well would only reiterate from the pleadings of the writ petition and the counter affidavit filed respectively by them bringing in any new fact or circumstances or law for proper consideration and therefore this court is left with no chance but to decide on the above writ petition on merits, in consideration of materials made available on records and the question of law on the subject.

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8. The writ petition has been filed seeking to declare the Tamil Nadu Panchayat Union Rules 1997 made under the Tamil Nadu Panchayat Act, 1994 and most specifically Section 2 (e) as invalid, illegal and unconstitutional and to pass such other orders and to pass such further orders.

9. No doubt, that the first respondent State of Tamil Nadu in exercise of its powers conferred by Clause (xxxiii) of Section (2) of Sub-section 242 of the Tamil Nadu Panchayats Act, 1994 has framed the new Rules called the Tamil Nadu Panchayats Buildings Rules, 1997 superseding the Tamil Nadu Panchayat Buildings Rules, 1970 made under the Tamil Nadu Panchayat Act, 1958.

10. Regarding the exercise of powers vested with the first respondent State to frame such rules as one in hand viz., The Tamil Nadu Panchayat Buildings Rules, 1997 are concerned absolutely there can be no second thought regarding the powers vested with the first respondent Government since Section 242 (2) of Tamil Nadu Panchayat Act 1994. The point for consideration is whether such powers conferred on the State by the statute has been exercised bearing in mind the very scheme and formulation of the Act particularly the vesting of the powers for the approval and lay out and sites for buildings and huts with the President of the Village Panchayat.

11. Whether the power vested in the first respondent Tamil Nadu Government or in exercise of such power to frame rules in general or beyond the question, since the statute mentioned above confess on the State such powers, but the vital point for consideration is the exercise of such powers must be on vital grounds or reasons for the benefit of the general public falling under the purview of the Panchayat Administration.

12. In the case in hand though under the power conferred by the statute that Section 242 of the Tamil Nadu Panchayats Act, 1994, the first respondent State has exercised the powers for the specific purpose of supersession of the Tamilnadu Panchayat Buildings Rules, 1970 but the act of the first respondent in exercise of such power has not mentioned or made it known to the objects sought to be achieved. No such acts would be permitted to be indulged in or would there be any powers exercised on the part of the State for no reason assigned, particularly regarding the object sought to be achieved. So that, the citizens will be able to understand as to such making of the rules by the State is beneficial to their interest and therefore there cannot be a second thought regarding the act of the State either it is pertaining to

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supersession of the Panchayat Buildings Rules or making new Rules in the place of the old ones. The impugned order of the first respondent-State under which the new rules are made, is absolute silent in this regard. On a consideration of the subject in hand, the very scheme and formulation if the Act particularly vesting of the powers for approval of layouts and sites for that buildings and huts plucking the same from the Panchayat Commissioner and vesting the powers with the President of the Village Panchayat must have been built on sound principles and strong reasons in making such Legislation or Rules. The first respondent-State is bound to consider as to how far it is going to be beneficial to the general public or to what extent it is likely to affect the general public if it is passed without application of mind, particularly regarding the object sought to be achieved, since such an act undertaken by the State is susceptible to create chaos and confusion.

13. The Rules seek to modify and regulate the development of land in the village areas establishing appropriate mechanism for the approval of layouts by sites for buildings and huts, streets, lanes, passages and pathways. It also further provides for the limitation and specifications for space to be left around the building and the requirement of appropriate foundation and basement floor, the size of the rooms, walls and their heights and the provision made for the common and communal amenities in the case of layouts etc.,

14. As per the superseded rules, it was the "Executive Authority" who was the sanctioning authority for the grant of approval of layout and sites for buildings and huts and he was vested with powers to regulate the grant of permission to building plan at the panchayat level and he managed all the affairs arising out of the exercise of such powers at the panchayat level. But now as per the new rules "Executive Authority" means the "President of the Village Panchayat" that is to say that the Presidents of the village Panchayat have been designated as the "Executive Authority" and they are vested with the powers of the Executive authority as per the scheme and framework of the rules. The task of approval of the layouts and plans for the buildings and sites are now sought to be given into the hands of the President of the village panchayats, which hitherto has been vested with the Executive Officers.

15. Now in the Tamil Nadu Panchayat Buildings Rules, 1970 made under the Tamil Nadu Panchayats Act, 1958, the Executive Authority as per Rule (2) (e) means 'Executive Officer' in the case of Town Panchayat 'Commissioner of

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Panchayat Union' in the case of village panchayat and the same is now sought to be shifted to the President of the Village Panchayat and excepting for this modification in respect of other aspects, the new Rules 1997 remain the same as under Rule 1970 and as argued on the part of the petitioner the marked deviation from the said rules has taken place only in the case of the person or authority with whom the powers of the task of approval of layouts and plans for the buildings and sites have to vest.

16. As per the present rule, the president of Village Panchayat is an elected member by the electoral collage and it is undesirable on the part of the Government to entrust such matters which are to be wielded by the Executive Authority particularly the subject being technical and if at all such major deviation has to be made in the rules, it could only be brought forth with the approval of the law making body, the Legislature and not by removing the terms "Executive Officer" and "Commissioner" under Section 2(e) and inserting the term "President" of the Village Panchayat in order to mean the Executive Authority. The very term "Executive Authority" itself would go a long way to convey the meaning that the authority must be an Executive and qualified to deal with subjects which are technical in nature such as one in hand which pertains to granting of the approval for building structures and layouts and the amendment introduced to the said rule by means of G.O. and therefore, the rules framed and formulated are beyond the rule making power of the Government as merely derived from Section 242 of the Tamil Nadu Panchayats Act 1994 which would lead only to the anamolous situation if the presidents of the Panchayats are empowered that too act as such Executive Authority. The elected members such as the president need not necessarily be well versed in the grant of permission or approval or in sanctioning the layouts and the Commissioner of Panchayat Union since being a public servant revolving under the Government as its appointee, is in a far better position to deal with the subject than the elected panchayat president and the post of president of Village Panchayat since being the representative post, no qualification has been prescribed for a person to contest for the post of the president and need not necessarily possess even the basic qualifications to meet with the requirements in the grant of sanction or approval and it is dangerous to entrust such vital functions with persons for whom no prescribed qualifications are required and it would only create a anamolous situation. An Executive Authority would be in a fair better position to assess the situation in a larger perspective in the interest of the whole village and hence those functions could be carried only by a person who possesses certain basic qualifications like Commissioner of Panchayat

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Unions or the Executive Officer.

17. The scheme of the present rule seeking to empower the Executive Authority with the elected members of the panchayat wherein no rule or regulation provides for the exercise of such powers devised under rules and the manner is susceptible only to lead to arbitrary exercise of such technical powers and the net result will be only confusion and chaos in the grant of sanction and approval of the layouts, buildings and structures in the village. Furthermore, the amendment of these rules do not provide for any disciplinary control against those erring panchayat presidents and uncontrollable exercise of such technical powers only would lead to misuse of the authority as it has come to be proved in reality in many such cases. The fear in entrusting such powers with the presidents of Panchayats, there is possibility for politicising the matter of sanction or approval of layouts and sites cannot also be ruled out in which event worst sufferers are the general public of the village.

18. Moreover, if the Executive Authority is the Commissioner or officer and in case of an error or deviation committed on his part the Government could exercise its control over them, whereas in the case of elected members it is difficult to exercise such control.

19. For all the above reasons assigned, this Court is of the view that Rule 2(e) of the Tamil Nadu Panchayat Building Rules 1997 made under Tamil Nadu Panchayat Act 1994 only becomes liable to be declared illegal and unconstitutional and the same is ordered accordingly and hence with the following order:

In result,

(i) the above writ petition succeeds and the same is allowed;

(ii) for all the above reasons assigned,Rule 2(e) of the Tamil Nadu Panchayat Building Rules 1997 made under Tamil Nadu Panchayat Act 1994 is declared illegal and unconstitutional;

(iii) however, in the circumstances of the case, there shall be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To
1. The Secretary to government
   State of Tamilnadu
   Rural Development Deput.,
   Fort Saint George,
   Chennai.9

2. The Director of Rural
   -Development,
   Chennai-15.

3. The Director of Town and
   -Country Planning,
   Chennai.2

1 cc to the Govt. Pleader, High Court, Madras. SR. 51254
1 cc to Mr. K.S. Natarajan, Advocate, SR. 51097

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